

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5403 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DIVISIONAL CONTROLLER

Versus

YASIMKHAN HUSSEINKHAN TURK

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Appearance:

MR YS LAKHANI for Petitioner

MR HK RATHOD for Respondent No. 1

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CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 17/10/97

ORAL JUDGEMENT

RULE had been issued in this matter earlier by my

brother Calla, J. on 29th August 1997. By that order the award was stayed to the extent of back wages only. Today I have heard Mr Lakhani for the petitioner and Mr Rathod for the respondent. The respondent is working as a bus conductor under the petitioner-corporation. On 11.10.1993 it was found that he had not issued tickets to some 8 passengers. A departmental inquiry was held and he was ordered to be dismissed on 12th May 1994.

2 After reference to the Labour Court, the learned presiding officer of the Labour Court by his award dated 8th October 1996 in Reference (LCR) No.276 of 1995 came to the conclusion with misconduct had been established, but exercising his powers under section 11-A of the Act, the learned Judge granted reinstatement with 20% of the back wages. Being aggrieved by that order this petition has been filed by the petitioner-corporation.

3 Mr Lakhani for the petitioner has submitted that since misconduct was held to be proved, the learned judge ought not to have awarded back wages and in any case. If he felt that the dismissal was excessive, some appropriate punishment ought to have been imposed. Mr Lakhani pointed out that there are some 13 misconducts committed by the respondent in his service of about 15 years until this particular misconduct. Mr Rathod for the respondent submits that the order of the reinstatement in any case requires to be sustained and that the respondent-workman is prepared to give up back wages for that.

4 In my view, the submission of Mr Lakhani is well taken. Mere denial of back wages is not sufficient in view of the fact that large number of defaults committed by the respondent-workman in the past. Hence, the impugned award is modified. Although the award is confirmed to the extent of reinstatement, the award of 20% of the back wages is set aside. Over and above this, the respondent-workman will be denied three increments with future effect. The petitioners are also given a liberty to post the respondent-workman in some other position if they deem it proper such as peon if they are of the view that the respondent does not deserve to be engaged in jobs where monetary transactions are involved. The petitioners will see to it that the respondent-workman is reinstated on or before 17th November 1997. RULE is made absolute as above with no order as to costs.

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(mohd)